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ALEXANDER L. STEVAS
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No. 82-11

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

MENNONITE BOARD OF MISSIONS,
Appellant,

v.

RICHARD C. ADAMS,
Appellee.

APPEAL FROM THE
INDIANA COURT OF APPEALS

BRIEF OF APPELLEE

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QUESTIONS PRESENTED

I. Does a statutory scheme that requires notice by publication to a mortgagee before a tax sale violate the due process clause of the fourteenth amendment?

II. Does a statutory scheme that does not require notice to a mortgagee before the end of a mortgage redemption period constitute taking without just compensation?

III. May a state constitutionally distinguish between notice given to an owner and notice given to a mortgagee in a tax sale statutory scheme without violating the equal protection clause of the fourteenth amendment?

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Other Authorities:

Bureau of Census, United States Department of Commerce, Statistical Abstract of the United States 1981 (102d ed. 1981) 19

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Appeal from the
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STATEMENT OF THE CASE

This case arose because of the actions of three separate parties. As the Appellant Mennonite Board of Missions (hereinafter "the Board" or "the Mortgagee") noted in its Statement of the Case (see Brief of Appellant at 4-12), the Board was a mortgagee of property in Elkhart, Indiana. (J.A. 45-47) The Appellee, Richard C. Adams

(hereinafter "Adams"), purchased the property at a tax sale (J.A. 3-4, 13) after the mortgagor, Alfred Jean M. Moore (hereinafter "Moore") failed to pay property taxes (J.A. 17) even though she was obligated to do so by virtue of the mortgage. (J.A. 45-47) After the expiration of the statutory two-year redemption period, the Board discovered that Moore had not paid taxes either prior to the sale or during the redemption period. (J.A. 17)

Adams filed an action to quiet title to the real estate soon after the expiration of the redemption period, naming both the Board and Moore as defendants. (J.A. 3-6) Moore did not appear and a default decree was entered against her (J.A. 14-15); she is not a party to this appeal. Adams and the Board both filed motions for summary judgment (J.A. 15-16; 18-19) and the trial court, finding no

dispute as to material facts, granted Adams's motion. (J.A. 36-37) This decision was upheld by the Court of Appeals of Indiana in an unpublished decision (Jurisdictional Statement at 17-28) and, after the Supreme Court of Indiana denied transfer, appeal was filed in this Court. (Jurisdictional Statement at 44-45)

SUMMARY OF ARGUMENT

The Board has attacked the decision below on several grounds, most notably on the ground that the notice given to it was insufficient in the present case. The Board relies on several decisions from this Court, but an analysis of these decisions reveals that none of them is pertinent. Moore and the Board had analogous interests in the property and notice to Moore would tend to protect the interests of the Board. The protection of recognized interests is the purpose of notice requirements.

Ample reasons exist to support the Legislature's determination that mortgagees do not need as sufficient a notice as do landowners. Mortgagees are better able to protect themselves than are landowners. They have several alternative methods available to them by which they may protect themselves. The Board drafted the mortgage, which did not take advantage of these

available protections. The Legislature could have concluded that more certain notice would have been administratively and commercially unfeasible. Finally, the property interests of landowners and mortgagees, although similar, are different: the landowner's sole interest is in the property itself but the mortgagee has an interest in the lien upon the property. Removal of the property takes all the landowner has; it does not destroy the underlying obligation upon which the mortgagee may recover.

The Board also argues that it should have received notice before the expiration of the statutory redemption period. Just last term, however, this Court recognized that all persons are presumed to know the law and that the state may condition the retention of a property interest upon the performance of a task within a limited time period. The State, in the present

case, is requiring nothing more of the Board.

Finally, the Board raises an equal protection challenge to the distinctions made between landowners and mortgagees. These distinctions are based on rational reasons, however, and the Legislature properly could have made the distinctions because of such rational reasons.

ARGUMENT

I. NOTICE BY PUBLICATION AND POSTING ADEQUATELY SAFEGUARDS A MORTGAGEE'S INTEREST IN PROPERTY.

A. Such Notice Is "Appropriate To The Nature Of The Case."

Both in the courts below and in this appeal the Board has based its primary reliance on this Court's decision in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950). In that decision Justice Jackson, writing for the Court, first used the often quoted statement:

> Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.

Id. at 313. Adams concedes that the Board

had a property interest at stake, the property interest being in the lien it had by virtue of the mortgage as a security for Moore's debt. The Board did not have title to the land. Indiana Department of Revenue v. Colpaert Realty Corp., 231 Ind. 463, 109 N.E.2d 415 (1952). This Court has never required that non-owners of land receive more than published notice where action is taken against the land. As noted in Mullane, the reason for this is that "an owner of tangible property . . . usually arranges means to learn of any direct attack upon his possessory or proprietary rights." 339 U.S. at 316. The court below correctly refused to expand the established rule to require more certain notice to the mortgagee. The court below held, in effect, that the Legislature's notice scheme adequately met the Mullane standard that "notice must be of such nature as reasonably to convey the required

information . . . ." Id. at 314. Ample reasons exist for affirming this finding.

The Board obviously carries a heavy burden because of the strong presumption of constitutionality that a statutory scheme carries with it. St. Martin Evangelical Lutheran Church v. South Dakota, 451 U.S. 772 (1981); United States v. Vuitch, 402 U.S. 62 (1971). As will be shown, the Indiana State Legislature had sufficient reasons for the notice scheme that it established. In addition, the Board had available to it several methods it could have employed to protect itself from the loss of the property interest it held in the mortgage. These factors and others lead to the conclusion that the decision below should be affirmed.

B. Precedent From This Court Does Not Resolve The Issue Presented On Appeal.

Mullane v. Central Hanover Bank & Trust Co., supra, involved the question of whether published notice was sufficient to make beneficiaries of a common trust fund aware that the fund's trustee had sought a judicial settlement of accounts. This Court held that something more than published notice was necessary. In doing so, this Court established a balancing test that weighed the interest of the state in effecting final settlement of the trust fund, 339 U.S. at 313, against the individual's interest in receiving notice of such a settlement. Id. at 314. Such a necessary balance continually has been recognized by this Court and others as a necessary element of due process. See, e.g., Mathews v. Eldridge, 424 U.S. 319, 334-35 (1976); Cafeteria & Restaurant Workers Union, Local 473 v. McElroy, 367

U.S. 886, 894-95 (1961); Smith v. Dallas County Board of Education, 480 F. Supp. 1324, 1338 (S.D. Ala. 1979); Pharmaceutical Manufacturers Association v. Weinberger, 411 F. Supp. 576, 578 (D.D.C. 1976). Indeed, such a balancing is necessary to any due process analysis. As Justice Stewart noted in his majority opinion in Cafeteria & Restaurant Workers Union, supra, 367 U.S. at 895, "[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."

One key factor in the Mullane decision was the lack of representation by one set of contestants in the absence of certain notice to the beneficiaries of the common trust fund. "[T]hese beneficiaries do have a resident fiduciary as caretaker of their interest in this property. But it is their caretaker who in the accounting becomes their adversary."

339 U.S. at 316 (emphasis added). Such is not true in the present case. Moore and the Board had similar interests at stake—Moore's in the property itself and the Board's in its lien upon the property—and notice to one of these parties should have served to protect both parties' interests. The Board concedes that notice was mailed to Moore both before the tax sale and before the expiration of the redemption period. Brief of Appellant at 7 n.8. For whatever reason, Moore chose not to respond. Still, those parties who had interests in the property or the lien prior to the tax sale were given a more certain notice than was given in Mullane prior to that tax sale.

Moore had an interest in the property of at least $6,000 (although the record does not indicate the exact value of the property, Moore took a $14,000 mortgage (J.A. 45) and had an $8,000 balance due

(J.A. 16).) Certainly the typical property owner with that type of stake in property would normally respond when notified of the potential loss of his property. That being true, this Court should uphold the adequacy of the notice given to those with a pre-tax sale interest in the property and the lien. This Court has noted that due process requirements are shaped by the typical cases, not—as were Moore's actions in the present case—the rare exceptions. Califano v. Yamasaki, 442 U.S. 682, 696 (1979).

The same factors weigh against the Board's reliance on Schroeder v. City of New York, 371 U.S. 208 (1962), and Walker v. City of Hutchinson, 352 U.S. 112 (1956). These factually similar condemnation proceedings were appealed to this Court based on a lack of notice to individual landowners. In Walker, notice was by publication only; in Schroeder published notice was augmented

by notice posted not on the landowner's land but on land near the proposed diversion of a river. This Court acknowledged that no mechanical test exists for deciding whether notice is sufficient, Schroeder, supra, 371 U.S. at 212, but found in each case that notice by publication was insufficient to notify the respective landowners. Id. at 212-13; Walker, supra, 352 U.S. at 116.

Obviously, Schroeder and Walker both deal with the notice required to be given to owners of land, not to mere mortgagees. More importantly, the holdings of these two cases should not be extended to mortgagees. As noted above, the Board does not contest the sufficiency of notice given to Moore. Instead, it rests its appeal on the alleged insufficiency of notice that it received. But because the interest that Moore had in the property itself and that the Board had in its lien

so closely parallel one another, the State Legislature could and did reasonably conclude that mailed notice to one would suffice to protect the interests of both. This is the kind of balancing that Justice Powell, speaking for this Court, has recognized must be made in such situations, see Mathews, supra, 424 U.S. at 334-35, and, even if this Court disagrees with the wisdom of the Legislature's choice, it should not rule that the choice was unconstitutional just because of this disagreement, see Greene v. Lindsey, ___ U.S. ___, 102 S. Ct. 1874, 1883 (1982)(O'Connor, J., dissenting).

Finally, the Board places great reliance on Greene, supra. This reliance is questionable; the decision was not concerned with a fact situation similar to that presented by the present appeal and the decision must be read as a narrow one peculiar to its facts. In Greene

this Court held that mere posting on an apartment door in a forcible detainer action was not sufficient notice where the process servers who posted the notice knew that such notices often were removed before they were seen by the intended tenants. Yet a reading of this decision indicates that both the majority and the minority believed the outcome of the case to be governed by its peculiar facts. See 102 S. Ct. at 1879-80; id. at 1882-83 (O'Connor, J., dissenting).

Significantly, however, this Court's majority opinion in Greene helped further explain the balancing test that must be applied to a decision on whether notice is adequate:

> In arriving at the constitutional assessment, we look to the realities of the case before us: In determining the constitutionality of a procedure established by

> the State to provide notice in a particular class of cases, "its effect must be judged in the light of its practical application to the affairs of men as they are ordinarily conducted." North Laramie Land Co. v. Hoffman, 268 U.S. 276, 283, 45 S.Ct. 491, 494, 69 L.Ed. 953 (1925).

Id. at 1879. As will be shown below, "the affairs of men as they are ordinarily conducted" indicate that, in the present case, the Board received all of the notice it reasonably could have expected to receive. Thus, because the Board admits that the statutory scheme was followed carefully in this case, this Court should hold that the notice provisions of the scheme are not constitutionally infirm.

C. The Statutory Notice Provisions Chosen By The State Legislature Were Constitutional.

In his dissent in the seminal case of Fuentes v. Shevin, 407 U.S. 67 (1972), Justice White properly referred to the balance necessary in due process questions between the government function involved and the nature of the private interest affected. Id. at 101-02 (White, J., dissenting)(citing Cafeteria & Restaurant Workers Union, supra, 367 U.S. at 895). "In considering whether this resolution of conflicting interests is unconstitutional, much depends on one's perceptions of the practical considerations involved." 407 U.S. at 100 (White, J., dissenting). Many reasons exist to support the conclusion that the State Legislature properly considered the practical reasons involved when it did not require that mortgagees receive mailed notice prior to tax sales.

First, the vast majority of mortgagees are professional lending institutions that make substantial amounts of their income from their status as mortgagees. For example, recent data indicate that of the $1,314.7 billion in mortgage credits outstanding in this country in 1980, $1,114.1 billion, or 85%, were held by just five kinds of lenders: savings and loan associations, commercial banks, mutual savings banks, life insurance companies, and federal credit agencies. See Bureau of the Census, United States Department of Commerce, Statistical Abstract of the United States 1981 517 (102d ed. 1981). These institutions are the type that will take any of the numerous steps available to them to protect their interests. The Legislature properly could have concluded that they, as mortgagees, did not need the protection that landowners needed and, thus, could conclude that mailed notice was not

required for mortgagees. This Court has noted that the purpose of notice is to convey required information, Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 13 (1978); Mullane, supra, 339 U.S. at 314, and the Legislature could have concluded that other methods of conveying information were available to the mortgagees. Little is resolved by a plea by the Board in the present case that it is not a professional lending institution. First, the same alternative protections are available to it as are available to professional lending institutions. Second, concepts of due process are formed by looking toward the majority of cases, not the exception. Califano, supra, 442 U.S. at 696.

The court below recognized these factors and outlined several ways in which the Board could have protected itself.

Though [the Board] may not be a professional money lender, it freely chose to enter an area of sophisticated financial investment and thereby necessarily chose to incur the risk inherent therein. The State cannot reasonably be expected to assume the risk of its citizens' business ventures. [The Board] could have protected itself in one of at least three ways, in addition to the notice by the State. First a condition of the mortgage could have required a copy of the paid tax assessment be given to [the Board] within a given time after the taxes were due. Second, the mortgage could have provided that a portion of each payment be put in escrow and [the Board] then pay the tax assessment. Or third, [the Board] could have checked the public records to determine whether the tax assessment had been paid.

(Jurisdictional Statement at 27 n.9)

The Legislature could have determined that these or other actions by the Board adequately would have provided it notice of the delinquent tax payments. For example, the Board could have asked Moore whether she had paid the taxes. One court has noted that "it is incomprehensible that persons owning real estate are unaware of the fact that each year taxes become due and owing on all real estate . . . ." Catoor v. Blair, 358 F. Supp. 815, 816 (N.D. Ill.), aff'd without opinion, 414 U.S. 990 (1973). The same can be said of the Board in the present case, particularly because the mortgage that it prepared specifically required Moore to pay such taxes. (J.A. 46) As noted by the Board (Brief of Appellant at 7), Indiana statutes do not permit a list of property with delinquent taxes to be drafted until the taxes are delinquent for at least

fifteen months. More than two additional months lapse before a tax sale is held (id.), and the mortgagee has an additional two years after the tax sale to redeem its interest. (Id. at 8-9) This lengthy grace period without any action on the part of the Board supports the reasonableness of the Legislature's conclusion that those who enter into the mortgage business should be prepared to take reasonable steps to protect themselves. Prudent businessmen would do just that. See Greene, supra, 102 S. Ct. at 1879.

The Legislature also could have concluded that requiring mailed notice is both administratively and commercially unfeasible. As the dissent noted in Township of Montville v. Block 69, Lot 10, 74 N.J. 1, 376 A.2d 909, 921-22 (1977)(Conford, P.J.A.D., dissenting), New Jersey's experience with mailed notice had faced precisely those obstacles. The plan was

administratively unfeasible because (1) the required notices and proofs of service could not be permanently maintained in tax assessors' offices and (2) those offices could not be adapted to offices of public record. These factors led title insurance companies to conclude that it would be commercially impractical to insure titles based on foreclosures under that system.

The Board argues in its brief that methods other than those chosen by the Legislature could better achieve the Legislature's goals. (Brief of Appellant at 25-29) The wisdom of the Legislature's choices is not before this Court; instead, this Court must base its decision on the constitutionality of the choices made. Greene, supra, 102 S. Ct. at 1883 (O'Connor, J., dissenting). In the same manner, the Legislature's amendment of notice requirements (see Brief of Appellant at 4 n.1), in no way invalidates the constitutionality

of the Legislature's prior choices.

The present appeal does not present a question like that presented in Schroeder, supra, Walker, supra, or Mullane, supra, where, in each instance, a finding in opposition to the respective appellants would have resulted in the appellants' losing the entire interests they held in their respective properties. Instead, the Board in the present case still can recover on the note underlying the mortgage it entered into. See G. Osborne, G. Nelson & D. Whitman, Real Estate Finance Law § 8.1 (1979). For all of these reasons, this Court should conclude that the judgment of the Legislature in establishing the statutory scheme followed in this case was proper and uphold the scheme against constitutional attack.

II. THE STATE IS NOT OBLIGATED TO GIVE NOTICE BEFORE THE END OF A STATUTORY REDEMPTION PERIOD.

The question of whether notice constitutionally must be given before the end of a statutory redemption period was addressed by this Court just last term in a case that also was appealed from the Indiana courts, Texaco, Inc. v. Short, ___ U.S. ___, 102 S. Ct. 781 (1982). That appeal involved several challenges to the Indiana mineral lapse statutes, which provide that a subsurface mineral interest separate from the surface interest would "lapse" if not used in one of several ways during a twenty-year period and would revert to the owner of the surface interest. This Court upheld the statutory scheme against several constitutional attacks. Among its holdings, this Court stated that the State was not required to give individual notice to all mineral rights owners of the passage of the new law.

Id. at 793. Key to this determination was a finding that a two-year grace period existed during which mineral rights owners could be expected to familiarize themselves with the law:

> The answer to this question is no different from that posed for any legislative enactment affecting substantial rights. Generally, a legislature need do nothing more than enact and publish the law, and afford the citizenry a reasonable opportunity to familiarize itself with its terms and to comply. In this case, the two-year grace period included in the Indiana statute forecloses any argument that the statute is invalid because mineral owners may not have had an opportunity to become familiar with its terms.

Id.

This Court recognized the "power of the State to condition the retention of a

property right upon the performance of an act within a limited period of time." Id. at 791. That is precisely what the State Legislature has required of the Board in the present case. It has given to the Board and to all others with an interest in property or in mortgages to property an opportunity to redeem that interest within a two-year period; otherwise, the interest will cease to exist. As Texaco teaches, the Board and others similarly situated are presumed to know the existence of this law. See id. at 793. Furthermore, the Board is expected to follow that law if it is to retain the property interest that it previously held. See id. at 791.

The Board attempts to distinguish Texaco by arguing that a series of affirmative acts by state officials triggered the Board's loss of a property interest. (Brief of Appellant at 31-32) Throughout the remainder of its brief, however, the Board argues that

just the opposite situation has caused it to lose a property interest: the Board elsewhere consistently criticizes the lack of affirmative actions by the State in failing to give positive notice both before the tax sale and before the expiration of the redemption period. Adams agrees with the Board to the extent that it is arguing that Texaco has no applicability to the question of required notice before the tax sale. To the extent that the question concerns whether personalized notice must be given before the end of the redemption period, however, Texaco precisely resolves that question in Adams's favor.

Adams has shown previously that the Board received all of the notice to which it was entitled before the tax sale was held. This being so, the Board's second question on appeal is whether it was entitled to notice after the tax sale but before the end of the redemption period. In its brief, the

Board never appears to address this question in a straightforward manner. Yet that is precisely the question resolved by Texaco. After this Court holds that the Board received adequate notice before the tax sale, Texaco then imputes to the Board knowledge of the redemption period, see id. at 793, and power to the state to condition retention of a property interest upon taking certain actions, see id. at 791, i.e., using the redemption period to its advantage.

Other courts have similarly rejected challenges to self-executing properties of statutes. The court in De Tenorio v. McGowan, 510 F.2d 92 (5th Cir.), cert. denied, 423 U.S. 877 (1975), held that due process was not denied because a treaty gave a foreign national only three years to sell property she had inherited within the United States. In Equity Mortgage Corp. v. Loftus, 504 F.2d 1071 (4th Cir. 1974), the court charged a senior lienor with knowledge of a statute

that permitted the United States to redeem realty upon which it had a tax lien by tender of a specified amount. The court in Buell v. Sears, Roebuck & Co., 321 F.2d 468 (10th Cir. 1963), held that one who dedicated land for a public street was charged with knowledge of a statute that vested the land in an adjoining landowner once the Government had vacated the land.

These decisions all support the conclusion reached by this Court in Texaco, supra. Due process is not violated either by charging the Board with knowledge of the statutory redemption period or requiring the Board to take affirmative steps during that redemption period in order to protect the property interest it has in the mortgage.

III. THE STATE CONSTITUTIONALLY MAY DISTINGUISH BETWEEN OWNERS AND MORTGAGEES FOR THE PURPOSE OF NOTICE REQUIREMENTS WITHOUT VIOLATING THE MORTGAGEES' GUARANTEES OF EQUAL PROTECTION.

The Board does not and cannot contend that this appeal involves either a suspect classification or a fundamental right. Thus, this Court has recognized that some inequality is permitted by the state in its treatment of different kinds of persons. San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 50-51 (1973). The state must choose the least restrictive path only where such a suspect classification or fundamental right is involved. Id. Rodriguez concerned an unsuccessful challenge to the state financing of local schools based partly on varying amounts from local property taxes.

In the field of taxation, this Court has recognized a particularly large leeway in classifications, Kahn v. Shevin, 416 U.S. 351, 355-56 (1974), and has stated that

courts should not substitute their judgments for those of legislatures. Id. at 356 n.10. Only where no rational reason exists for the legislatively drawn distinction should that distinction be overturned. Texaco, supra, 102 S. Ct. at 797. "[T]he Fourteenth Amendment gives the federal courts no power to impose upon the States their view of what constitutes wise economic or social policy." Dandridge v. Williams, 397 U.S. 471, 486 (1970).

Adams previously has noted a myriad of reasons why the State Legislature might choose to distinguish between the notice that must be given owners and the notice that must be given mortgagees: mortgagees, as a class, are better able to protect themselves; mortgagees have the option of taking certain actions unavailable to owners that serve to protect them; mailed notice is economically and administratively unfeasible; because of the different ownership interests of

landowners and mortgagees, different notice requirements are appropriate. All of these rational reasons support the distinctions that the Legislature has drawn between landowners and mortgagees.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals of Indiana should be affirmed.

Respectfully submitted,

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